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**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

<p>Alexis Gonzalez,</p> <p>Plaintiff,</p> <p>v.</p> <p>Resurgence Financial, LLC and                      Law Offices of Patenaude &amp; Felix,                      A.P.C.,</p> <p>Defendants.</p>	<p><b>Case No: 5:14-CV-00172-DSF-PJW</b></p> <p><b>Plaintiff's Objections related to                      Defendants' Motion To Dismiss                      Plaintiff's Complaint</b></p> <p><b>Date: May 12, 2014                      Time: 1:30 PM                      Dept. 840</b></p> <p><b>HON. DALE S. FISCHER</b></p>
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## I. Introduction

When the legal sufficiency of a complaint's allegations is tested by a motion under Rule 12(b)(6), “[R]eview is limited to the complaint.” *Cervantes v. City of San Diego*, 5 F.3d 1273, 1274 (9th Cir. 1993). All factual allegations set forth in the complaint “are taken as true and construed in the light most favorable to [p]laintiffs.” *Epstein v. Washington Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1999). Indeed, factual challenges to a plaintiff's complaint have no bearing on the legal sufficiency of the allegations under Rule 12(b)(6). A district court may not consider any material beyond the pleadings in ruling on a motion to dismiss under Fed. R. Civ. P. 12(b)(6). *Lee v. City of Los Angeles*, 250 F3d 668, 688, (9th Cir 2001).

Defendants have submitted the declaration of Jeffrey W. Speights with its motion to dismiss. *See* Declaration of Jeffrey W. Speights, Docket No. 11-3. Through this impermissible extrinsic evidence, Defendants attempt to establish several facts which they believe if taken as true relieve Defendants from liability, including, “On information and belief, a P&F employee called and spoke with Mr. Gonzalez on March 20, 2007 and March 31, 2007 regarding his account.” *See* Decl. of Jeffrey W. Speights, ¶ 5. None of these facts are contained in the complaint, therefore these factual challenges should have no bearing on the legal sufficiency of the allegations brought under a motion to dismiss under Rule 12(b)(6) and the entire declaration should be stricken from the record. *See Lee v. City of Los Angeles*, 250 F3d 668, 688, (9th Cir 2001).

## II. Argument

### A. Here Defendants inappropriately attempt to introduce extrinsic evidence. Plaintiff objects, and moves to strike this extrinsic evidence.

Through the use of extrinsic evidence, Defendants claim that Plaintiff was placed on notice of Defendants’ collection lawsuit, filed in the Superior Court of Riverside, on March 20, 2007 and March 31, 2007 when an employee of

1 Defendants called Plaintiff. See Decl. of Jeffrey W. Speights ¶ 4.

2 Specifically, Defendants allege that “On information and belief, a P&F  
3 employee called and spoke with Mr. Gonzalez on March 20, 2007 and March 31,  
4 2007 regarding his account.” See Decl. of Jeffrey W. Speights ¶ 5.

5 Defendants’ argument is improper as it relies entirely on inadmissible  
6 extrinsic evidence; and therefore, these factual challenges should have no bearing  
7 on the legal sufficiency of the allegations under Rule 12(b)(6) and should not be  
8 given any weight. See *Lee v. City of Los Angeles*, 250 F3d 668, 688, (9th Cir 2001)  
9 and *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n. 19  
10 (9th Cir. 1990). (“It is generally true that a trial court may not consider evidence  
11 outside the pleadings in connection with a motion to dismiss.”) See *Hal Roach*  
12 *Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n. 19 (9th Cir. 1990).

### 13 **III. Conclusion**

14 All factual allegations set forth in the complaint “are taken as true and  
15 construed in the light most favorable to plaintiffs.” Defendants cannot now attempt  
16 to introduce extrinsic evidence. For the reasons stated herein, Plaintiff objects to  
17 the attempt by Defendants to introduce extrinsic evidence, and moves to strike this  
18 extrinsic evidence.

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21 **Hyde & Swigart**

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23 Date: April 21, 2014

24 By: s/ Crosby S. Connolly  
25 Crosby S. Connolly  
26 Attorneys for Plaintiffs  
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